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Memorandum of Conversation

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SUBJECT:

Germany and Berlin



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PARTICIPANTS: The Secretary

Konrad Adenauer, Chancellor of the German Federal Republic
Heinrich von Brentano, Foreign Minister of the German Federal Republic

German

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Under Secretary Dillon
Under Secretary Merchant
Ambassador Dowling
Counselor Achilles
Assistant Secretary Kohler
Assistant Secretary Berding
Mr. Hillenbrand, GER
Mr. Wigderman, GER
Mr. McKiernan, GER/GPA
Mr. Miller, GER
Mrs. Lejins, LSAmbassador Greve
Mr. Felix von Eckardt
Dr. Karl Carstens
Mr. Franz Krapf
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Mr. Peter Limbourg
Mr. Karl-Quentner von Hase
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The White House - Gen. Goodpaster

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Foreign Minister von Brentano opened the discussion (before Chancellor Adenauer's arrival) by referring to the preparation of the Western position on Germany and Berlin for the Summit meeting. He said that clear alternatives -- or better, an agreed position -- could be prepared for consideration at the Western Foreign Ministers' meeting. The Western Powers might differ regarding certain nuances, but it was better to have a common position, even an unsatisfactory one, than to enter the Summit discussions in disagreement with one another. One of the questions on which an agreed position must be developed for presentation to the Soviets is: "What is the legal basis of the Western Powers' presence in Berlin?"

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Authority: MR 90-329*9

By: [Signature] 7/10/91

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Secretary

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Secretary Herter replied that we had prepared a number of papers covering varying alternative approaches to the Berlin problem but that we had taken no positions. The British had submitted no papers at all. The Germans had made their own position clear. The Secretary understood that they did not want to go beyond the Western proposals of July 28, 1959 and that they thought the existing situation was the best which could be achieved. He agreed that the Soviets should not be allowed to split the Western Powers. We had dealt with the problem at Geneva and could do so again. The alternatives which the United States had mentioned were for discussion only.

The Secretary said that we had studied the legal aspects of the Berlin situation very carefully and had found that the access rights of the Allied garrisons were clear but that the legal basis of civilian access was muddy because the 1949 agreements (i.e., the New York Agreement of May 4 and the Paris Four-Power communique of June 20) had merely confirmed a situation which had not been clear before. We had always been concerned about this and feared that the Soviets might concentrate on the attrition of civilian communications rather than Allied access.

Foreign Minister von Brentano concurred that the situation would be dangerous if the Soviets should accept Allied rights of access but contest the right of civilian traffic. He agreed that the 1949 agreements were not entirely clear but added that the Paris communique called for the improvement of civilian access and that this provision had never been implemented. The Soviets might now say that they want some sort of treaty settlement of the civilian access question. There is no telling where negotiations on this subject would end. In any case, an attempt would be made to intrude the "GDR" into the negotiations, and an agreement to which the GDR was a party would involve the de facto recognition of the GDR. While there is a legal distinction between de facto and de jure recognition, there is small difference from a political point of view and even de facto recognition would bring a severe psychological reaction in Germany.

The Foreign Minister considered that it would be a false starting point for discussions if the Western Powers allowed German civilian access rights to be put in question. These rights were confirmed by pre-1949 precedents. The Western Powers can only start by taking the position that the 1949 agreements confirmed German access rights. They can negotiate about the enforcement or implementation of these rights, but there is no basis for negotiation about the rights themselves.

Secretary Herter agreed it would be wrong to create any doubts about the situation. The matter had never come up directly at Geneva. There the Western Powers had spoken of access rights in general, without distinguishing Allied from civilian. However, he felt the question should be explored to determine what rights would exist vis-à-vis Pankow after the conclusion of a separate peace treaty between the Soviet Union and the GDR.

Foreign Minister von Brentano admitted that such a treaty would complicate the situation despite the fact that the treaty, which the Soviets would in effect be concluding with themselves, could not affect any existing rights. However, the moment one acknowledges any doubt about civilian access, the negotiating partner

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partner becomes the GDR rather than the Soviet Union. The purpose of the peace treaty would be to make the GDR a negotiating partner with the Western Powers. The Soviets might agree that Allied rights do not depend on Pankov, but maintain that this is true only of Allied rights. We must consider whether we are ready to discuss the question on this basis. Before making their July 26, 1959 proposal to the Soviets, the Western Powers all agreed that the primal (original) rights of the Allies could not be affected by an interim Berlin agreement. They agreed that no distinction should be made between Allied and civilian access rights. They also agreed that Allied rights would be reserved and remain valid after the expiration of an interim agreement.

The Foreign Minister then recapitulated his remarks (for the information of Chancellor Adenauer, who joined the meeting at this point) as follows: Allied primal rights should not be allowed to come into question; otherwise the Western Powers must deal with the GDR. It was agreed at Geneva that the legal situation was unambiguous, although the civil access situation was never clear. There were provisions in the Paris communique regarding improvement of civilian access, but these were never carried out. There is a great danger in considering the legal basis of the Western position in Berlin to be doubtful; this legal basis cannot be a subject for negotiation.

Chancellor Adenauer referred to the dangers of a temporary agreement, saying that the principle *rebus sic stantibus* would operate against the West. To conclude a contractual arrangement for one, two, or three years would mean constant blackmail thereafter. A contractual arrangement would bring insecurity and uncertainty; there would be a bad effect on the Berlin population, and large numbers would leave the city.

The Chancellor said that the Paris communique of 1949 expressly mentioned the civilian population and confirmed pre-blockade civilian traffic even if this traffic was never clearly defined. Traffic is a factual concept; the technical term "traffic" was used but legal rights were created. The Western Powers had protected civilian access via the Autobahn before 1949. Furthermore, the Western Powers had themselves taken, in notes to the Soviets, the position that civilian traffic was covered by access rights. The communique which was issued after the White House meeting that morning mentioned the need of the consent of the Berlin population for any agreement reached on Berlin. This consent would not be forthcoming if civilian access rights were not upheld in the agreement. In taking such a position, the Western Powers would lose Berlin's trust and get nothing in exchange from the Soviets. De Gaulle had told the Chancellor that he would never accept this; therefore Western unity would also be jeopardized.

Secretary Harter agreed, but pointed out that the Federal Republic and West Berlin had already adapted themselves to various East German measures before the Geneva conference. The West Germans had subsidized the payment of highway and waterways tolls and had dealt similarly with other harassments. If the Soviets quit their functions with respect to Berlin, there would be more tariffs, fees, etc., designed to undermine Berlin's economic life. Between whom would discussions of such matters take place?

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Chancellor Adenauer replied that there was no connection between the tolls and subsidies for Berlin. Berlin always needs support from the West and it depends on its transport for the import of supplies and the export of goods. The Cabinet had considered the tolls' question carefully and decided that the payment of the increases was only fair reimbursement for the cost of maintaining roads and waterways.

The Chancellor digressed to say that he had only recently heard how the Berlin situation had originally come about. At the time of the Yalta Conference, Roosevelt, Churchill, and Stalin had had three civilian advisers who worked on the question of Berlin. However, the three Heads of Government had a heavy program, and their time was entirely taken up by generals discussing more urgent military problems. At the end of the Conference, the Heads of Government had merely asked the three civilian advisers whether they had agreed with one another. The latter said they had agreed, and that was it. The legal position of Berlin was only roughly outlined. The problem was one of reasonable interpretation of the sketchy agreement. Things went well until the blockade. General Clay had then been ready to restore surface access by force, but an airlift was finally decided upon. If traffic to Berlin was not admissible under the agreement, the same would be true of the airlift. However, the airlift was in harmony with Allied rights, as the Soviets later admitted. Therefore the legal position of Berlin is clear, although the terms of the Yalta agreement with respect to Berlin are not.

Secretary Herter said that Berlin was being discussed because the Berlin issue was likely to arise at the Summit in the form of Soviet insistence on the necessity of a separate peace treaty with the GDR. If the issue does arise, the discussion will be picked up from the beginning, not the end, of the Geneva meeting. The Secretary added that he was sorry if there was any misunderstanding about our position on Berlin. When the Working Group had started work, we had jotted down a series of alternative proposals. Perhaps we had thus given a false impression that our position was changing. Our study of alternatives does not commit us to anything; one of the advantages of such studies is that they often reveal the unsoundness of some proposals. We mean to reject any idea which is not good. We wished to correct any false impression that the discussion in the Working Group denotes a weakening of our position. The Secretary hoped that any atmosphere of uncertainty could be dispelled in the various Western meetings before the Summit.

Chancellor Adenauer said that he personally had never believed that the United States was taking a weaker position. However, he had been surprised that this thought had been expressed to him by many of the Americans he had just met in New York. These comments might, of course, be election year rumors.

Secretary Herter replied that the best symbol of our position was our Berlin contingency planning. We had carried this planning to the point of envisaging preparations for war over Berlin. The Secretary added that he did not know whom the Chancellor had seen in New York, but that he was glad that the Chancellor had come to Washington to learn the facts.

Chancellor Adenauer then pointed out that half of the time for preparation for the Summit, which began with the Western Summit last December, had already elapsed.

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elapsed. He raised the question whether the Western Powers would be able to work out a completely agreed position by mid-May. He asked whether the Secretary, as coordinator of Summit preparations, would try to expedite these preparations.

Secretary Herter said that he agreed completely that preparations should be speeded up. Referring to the agreement of the President and the Chancellor that morning that disarmament was the most important item, he said that he hoped we would have a better idea in the next three weeks what line the Soviets will take and what the possibilities of serious negotiation are.

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